

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

May 12, 2021

1:41 p.m.

**MEMBERS PRESENT**

Senator Roger Holland, Chair  
Senator Mike Shower, Vice Chair  
Senator Shelley Hughes  
Senator Robert Myers  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Senator Lora Reinbold

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 6

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

- MOVED CSSJR 6 (JUD) OUT OF COMMITTEE

HOUSE BILL NO. 109

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- MOVED SCS HB 109 (JUD) OUT OF COMMITTEE

SENATE BILL NO. 129

"An Act relating to information on judicial officers provided in election pamphlets."

- SCHEDULED BUT NOT HEARD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3 (JUD)

"An Act relating to information on judicial officers provided in election pamphlets."

- SCHEDULED BUT NOT HEARD

#### PREVIOUS COMMITTEE ACTION

BILL: SJR 6

SHORT TITLE: CONST. AM: PERM FUND & PFDS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/21	(S)	READ THE FIRST TIME - REFERRALS	
01/22/21	(S)	STA, JUD, FIN	
02/04/21	(S)	STA AT 3:30 PM BUTROVICH 205	
02/04/21	(S)	Scheduled but Not Heard	
02/09/21	(S)	STA AT 3:30 PM BUTROVICH 205	
02/09/21	(S)	Heard & Held	
02/09/21	(S)	MINUTE(STA)	
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205	
02/11/21	(S)	Scheduled but Not Heard	
02/23/21	(S)	STA AT 3:30 PM BUTROVICH 205	
02/23/21	(S)	Moved SJR 6 Out of Committee	
02/23/21	(S)	MINUTE(STA)	
02/24/21	(S)	STA RPT 1DP 1NR 2AM	
02/24/21	(S)	DP: SHOWER	
02/24/21	(S)	NR: COSTELLO	
02/24/21	(S)	AM: HOLLAND, KAWASAKI	
04/21/21	(S)	JUD WAIVED PUBLIC HEARING NOTICE, RULE 23	
04/21/21	(S)	JUD AT 1:30 PM BUTROVICH 205	
04/21/21	(S)	Heard & Held	
04/21/21	(S)	MINUTE(JUD)	
04/26/21	(S)	JUD AT 1:30 PM BUTROVICH 205	
04/26/21	(S)	Heard & Held	
04/26/21	(S)	MINUTE(JUD)	
04/30/21	(S)	JUD AT 1:30 PM BUTROVICH 205	
04/30/21	(S)	<Bill Hearing Canceled>	
05/03/21	(S)	JUD AT 1:30 PM BUTROVICH 205	
05/03/21	(S)	<Bill Hearing Rescheduled to 05/07/2021>	
05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205	
05/07/21	(S)	<Bill Hearing Rescheduled to 05/10/2021>	
05/10/21	(S)	JUD AT 1:30 PM BUTROVICH 205	
05/10/21	(S)	<Bill Hearing Canceled>	
05/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205	

BILL: HB 109

SHORT TITLE: EXTEND BAR ASS'N BOARD OF GOVERNORS

SPONSOR(s) : CLAMAN

02/22/21	(H)	READ THE FIRST TIME - REFERRALS
02/22/21	(H)	JUD, FIN
03/22/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/22/21	(H)	Heard & Held
03/22/21	(H)	MINUTE(JUD)
03/24/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/24/21	(H)	Moved HB 109 Out of Committee
03/24/21	(H)	MINUTE(JUD)
03/25/21	(H)	JUD RPT 4DP 2NR 1AM
03/25/21	(H)	DP: DRUMMOND, SNYDER, KREISS-TOMKINS, CLAMAN
03/25/21	(H)	NR: EASTMAN, VANCE
03/25/21	(H)	AM: KURKA
04/09/21	(H)	FIN REFERRAL REMOVED
04/12/21	(H)	FIN AT 9:00 AM ADAMS 519
04/12/21	(H)	<Bill Hearing Canceled>
04/19/21	(H)	TRANSMITTED TO (S)
04/19/21	(H)	VERSION: HB 109
04/21/21	(S)	READ THE FIRST TIME - REFERRALS
04/21/21	(S)	JUD
05/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/05/21	(S)	Heard & Held
05/05/21	(S)	MINUTE(JUD)
05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/07/21	(S)	Heard & Held
05/07/21	(S)	MINUTE(JUD)
05/10/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/10/21	(S)	<Bill Hearing Canceled>
>		
04/19/21	(H)	TRANSMITTED TO (S)
04/19/21	(H)	VERSION: HB 109
04/21/21	(S)	READ THE FIRST TIME - REFERRALS
04/21/21	(S)	JUD
05/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/05/21	(S)	Heard & Held
05/05/21	(S)	MINUTE(JUD)
05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/07/21	(S)	Heard & Held
05/07/21	(S)	MINUTE(JUD)
05/10/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/10/21	(S)	<Bill Hearing Canceled>
05/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205

## **WITNESS REGISTER**

ED KING, Staff  
Senator Roger Holland  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of the committee, reviewed the changes in the proposed committee substitute (CS) for SJR 6, Version I, and answered questions.

BRANDON BREFCZYNSKI, Special Assistant to Policy Advisor  
Office of the Governor  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on SJR 6 on behalf of the governor.

CURTIS THAYER, Executive Director  
Alaska Energy Authority  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on SJR 6 on Power Cost Equalization.

LUCINDA MAHONEY, Commissioner  
Department of Revenue  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on SJR 6 on behalf of the administration.

WILLIAM MILKS, Senior Assistant Attorney General  
Legislation & Regulations Section  
Civil Division  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Answered constitutional questions on SJR 6.

EMILY NAUMAN, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions as bill drafter of SJR 6.

REPRESENTATIVE MATT CLAMAN  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 109.

## **ACTION NARRATIVE**

[1:41:42 PM](#)

**CHAIR ROGER HOLLAND** called the Senate Judiciary Standing Committee meeting to order at 1:41 p.m. Present at the call to order were Senators Myers, Shower, Kiehl, and Chair Holland. Senator Hughes arrived as the meeting was in progress.

### **SJR 6-CONST. AM: PERM FUND & PFDS**

[1:42:18 PM](#)

**CHAIR HOLLAND** announced the consideration of SENATE JOINT RESOLUTION NO. 6 Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

[SJR 6 was previously heard on 4/30/21 and 5/3/21. Public testimony was opened and closed on 4/30/21.]

[1:42:39 PM](#)

**SENATOR SHOWER** mistakenly made a motion on SB 129. [The committee treated it as though the motion was rescinded.]

[1:43:08 PM](#)

**SENATOR SHOWER** moved to adopt the proposed committee substitute (CS) for SJR 6 [work order 32-GS1694\I, Version I] as the working document.

**CHAIR HOLLAND** objected for discussion purposes.

[1:43:30 PM](#)

**ED KING**, Staff, Senator Roger Holland, Alaska State Legislature, Juneau, Alaska, reviewed the changes in the committee substitute (CS) for SJR 6, Version I. He stated that the bulk of the changes were made to Section 2. He stated that the original version of SJR 6, [work order 32-GS1694\A, Version A,] subsection (b) required an appropriation of the percentage-of-market-value (POMV) but the amount was unspecified. He said Version I would identify that amount as not more than five percent of the POMV of the permanent fund for the first five of the preceding six fiscal years.

**MR. KING** said that Version A, subsection (c) provided that a portion of the amount appropriated under (b) of this section shall be allocated for dividends as provided by law. Version I would change that language to require an amount equal to fifty

percent of the amount available for appropriation under subsection (b) shall be allocated as dividend payments.

[1:44:20 PM](#)

MR. KING explained that Version A, subsection (d) required a vote of the people for an amendment to the law that allowed for the dividend to take effect. Version I would remove that language because the dividend is specified in the Alaska Constitution. That provision in Version I states the legislature shall appropriate a portion of the amount appropriated under subsection (b) for Power Cost Equalization (PCE). He stated that the amount to be appropriated is defined as the amount necessary to equalize the cost of power in the state as provided by law.

MR. KING explained that Version I would add a new subsection (f), which provides that the permanent fund may be used to pay the costs associated with making investments under section (a) of the permanent fund amendment.

MR. KING explained that the transition language was adjusted to conform to the changes in Section 2, Version I.

[1:45:27 PM](#)

SENATOR KIEHL asked for an explanation of the language in Version I, subsection (f) that states the permanent fund may be used to pay costs associated with investments. He related his understanding that the Alaska Permanent Fund Corporation (APFC) runs the fund very leanly.

MR. KING explained that placing this language in the Alaska Constitution also provides an exemption from the dedicated fund clause for APFC investments. Thus, the investment earnings from the fund could be used to pay for management of the fund. Currently, APFC's management fees are paid for by the fund according to statute but are considered general fund expenditures. This change would place the language in the Alaska Constitution.

[1:46:22 PM](#)

SENATOR KIEHL asked for an explanation of the language for PCE in Version I, subsection (d).

MR. KING explained that this language ensures that a situation could not arise in which the cost of equalizing power cost across the state would be greater than the amount eligible to be withdrawn from the fund minus the amount paid to dividends. Currently, the amount available to the general fund far exceeds

the amount necessary for PCE; however, 50 or 100 years from now it might not be so.

1:48:13 PM

BRANDON BREFCZYNSKI, Special Assistant to Policy Advisor, Office of the Governor, Anchorage, Alaska, on behalf of the governor, responded that this resolution would solve a number of issues to allow the legislature to focus on the next steps, such as addressing the spending limit and state revenues.

SENATOR SHOWER related his understanding that this resolution is similar to one he introduced in a prior legislature. He stated it is important for people to understand that a number of legislators have worked on this issue. Some provisions are new, including the PCE language, which may require statutory changes. He said he hopes that the committee will fully vet the resolution. He asked Mr. Brefczynski to speak to statutory language that would be necessary if SJR 6 were to pass.

1:52:08 PM

MR. BREFCZYNSKI, after first clarifying the question, explained that under SJR 6 there will be a five percent percentage-of-market-value (POMV) draw based on a five-year lag average, of which 50 percent would be allocated to permanent fund dividends (PFDs). The other 50 percent would fund the PCE program as provided by law, and the remainder would be deposited to the general fund to fund government services. The PCE formula would be provided in statute.

SENATOR SHOWER asked him to address the statutory changes for PCE since the program was previously subsidized.

MR. BREFCZYNSKI responded that a number of programs are currently funded from the PCE Endowment Fund earnings. SJR 6 speaks to the PCE program itself. He deferred specific questions about the PCE program to Curtis Thayer with the Alaska Energy Authority. Since SJR 6 references the PCE program as provided in law, the program could be amended in the future to reflect the policy of the legislature. For example, if the legislature wanted to use some of the funding for infrastructure or to continue to subsidize electrical costs, it would come from the 50 percent allocation directed towards government.

1:55:04 PM

CHAIR HOLLAND explained that questions on PCE and SJR 6 arose during the press conference today. He said adding PCE funding to SJR 6 would help provide support for the bill. He characterized

the committee substitute (CS) for SJR 6, Version I, as a grand solution to a lot of smaller problems.

1:55:44 PM

CURTIS THAYER, Executive Director, Alaska Energy Authority, Anchorage, Alaska, stated that the PCE endowment has been a political football for many years. Two years ago, the reverse sweep issue drew more attention to it. SJR 6 would remove PCE from the political realm by placing this language in the constitution. It would allow for the continued PCE energy subsidy of approximately \$32 million to serve 85,000 Alaskans. He stated that the PCE program currently provides a cash payment to offset the high cost of energy bills in rural Alaska. The state has invested in infrastructure for some areas of the state. For example, the state built transmission lines from Willow to Healy to serve Railbelt communities. This subsidy saves Fairbanks \$40 million in energy costs. The state's policy has been to provide PCE payments to offset energy costs in rural Alaska since it is not feasible to run transmission lines to serve communities in rural Alaska.

1:57:37 PM

LUCINDA MAHONEY, Commissioner, Department of Revenue, Anchorage, Alaska, on behalf of the administration, stated that the governor introduced SJR 6 to establish a foundation and framework using a two-phased approach to the plan. The governor recognizes the importance of involving the legislature and citizens in the process. She stated that SJR 6 would transition the Alaska Permanent Fund into a single account to protect it from ad hoc spending. She reported that over the past ten years nearly \$18 billion was spent from the Earnings Reserve Account (ERA). Creating one account with a five percent percentage-of-market-value (POMV) draw would significantly impact spending and help the state move towards a structured and disciplined fiscal environment.

CHAIR HOLLAND asked if she was referring to spending from the Constitutional Budget Reserve Account.

MS. MAHONEY answered no. She said she was speaking about the Earnings Reserve Account expenditures.

SENATOR HUGHES joined the meeting.

1:59:11 PM

MS. MAHONEY stated that enshrining the permanent fund dividend (PFD) in the constitution would fulfill a promise to Alaskans



that they will share the state's wealth from natural resources. She characterized the PCE program as important to protect. One component of the plan would provide bridge funding to give the administration time to develop phase two of the plan. The next essential level will entail making structural changes to the expenditures and considering new and diverse revenue sources to complete the plan, she said.

2:00:31 PM

SENATOR SHOWER asked if constitutionally protecting a subsidy, such as PCE, creates any equal protection concerns. He recalled the March briefing in Senate Finance highlighted the PCE Endowment Fund's purpose as a financing source for electrical utilities. He offered his view that some statutory changes were necessary since the program has been used as a subsidy. Further, there have been some discussions about moving rural Alaska to a more sustainable energy source.

MR. BREFCZYNSKI deferred to Bill Milks, Department of Law to respond.

2:02:05 PM

WILLIAM MILKS, Senior Assistant Attorney General, Legislation & Regulations Section, Civil Division, Department of Law, Juneau, Alaska, in response to Senator Shower's question of equal protection to fund the PCE program from the permanent fund, opined that it would not be a violation. Currently, the state funds the PCE program and other programs that affect some of the states' population and some regions of the state differently than others.

He explained that any language placed in the Alaska Constitution must pass muster with the equal protection clause in the U.S. Constitution. However, the types of decisions made by state legislatures to fund various programs are given the lowest constitutional review to assess whether the state had a rational basis to fund one program over another. The state could easily identify differences in electrical costs in various parts of the state, so the PCE funding provision would not pose a difficult burden to meet. He reiterated that DOL does not view spending a portion of the permanent fund monies on a PCE program as a violation of the equal protection clause.

2:04:31 PM

SENATOR KIEHL related his understanding that the state subsidizes rural Alaska electrical costs and provides a tax subsidy to in-state natural gas for the Kenai Peninsula and

Anchorage. He asked if DOL's analysis would be different if the proposed constitutional amendment in SJR 6 were placed in statute.

MR. MILKS answered that the same analysis would apply related to use of state revenues for a specific purpose.

SENATOR SHOWER asked to have the Legislative Legal Services attorneys respond.

[2:06:00 PM](#)

CHAIR HOLLAND removed his objection. There being no further objection, CSSJR 6(JUD), Version I was before the committee as the working document.

[2:06:15 PM](#)

SENATOR KIEHL moved to adopt Amendment 1, [work order 32-GS1694\I.2].

32-GS1694\I.2  
Nauman  
5/8/21

#### **AMENDMENT 1**

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: CSSJR 6(JUD), Draft Version "I"

Page 2, line 5:

Delete "fifty"

Insert "at least twenty-five"

Page 2, line 10:

Delete "fifty"

Insert "twenty-five"

CHAIR HOLLAND objected for discussion purposes.

[2:06:24 PM](#)

SENATOR KIEHL explained that Amendment 1 would set the floor for permanent fund dividends (PFDs) at not less than 25 percent of the sustainable draw. Second, it would cap the draw for the PCE program at no more than 25 percent. He advocated for the PCE program funding, noting that he represents some communities that rely on the program. It would not create any ambiguity that would allow the state to exceed the total five percent percentage-of-market-value (POMV) draw. Instead, it would leave

25 percent as an undesignated draw. He acknowledged that this would not cover all the costs to fund PCE but it would establish 25 percent of the draw as a floor. The legislature could appropriate additional funds to meet Alaska North Slope energy needs and increase PFD amounts. However, it would not obligate the state to issue PFDs at \$2,800 under the proposed 50:50 split with an unbalanced budget. He related his understanding that the proposed plan would require an extra draw from the permanent fund of about three billion dollars to cover a couple of years. Even at the state's low levels of spending that has left many unmet needs for Alaskans, SJR 6 would not balance the budget. The net effect of Amendment 1 would be to lower the cap to a 25 percent draw for PCE and establish a 25 percent floor for PFDs. Amendment 1 would constitutionally guarantee the dividend but give the legislature fiscal room without resorting to taxes to balance the budget.

2:09:39 PM

CHAIR HOLLAND offered his belief that if the floor were set at 25 percent for PFDs, the legislature would never pay more than that for PFDs.

2:09:49 PM

SENATOR SHOWER stated that since 2006, the budget has nearly doubled. However, during that same period, the state's population increased by 100,000. He noted the state has experienced an outflow for the past six years. He agreed with Chair Holland that the legislature would limit PFDs under Amendment 1 because it would spend the additional funds on state services. He offered his belief that the 50:50 proposal is fair. He recalled Senator Wielechowski indicated that the 50:50 proposal would shrink PFD amounts to only 2.5 to 3 percent of total taxes and royalties. He said he cannot support Amendment 1 because ultimately voters will not support it.

2:11:49 PM

SENATOR HUGHES said if state spending were more in line with the overall population, she might entertain Amendment 1. However, state spending is not where it should be, she said. She emphasized that the state must settle this matter. Since the Wielechowski v. State case, the legislature knows that statutory changes will not remedy the situation whereas a constitutional amendment will. However, a constitutional amendment requires a public vote. If the remedy is not seen as fair and reasonable by the voters, it will likely fail. She offered her belief that permanent fund dividend issues have absorbed a majority of the legislature's time, which could be better spent on addressing

revenue shortfalls and other major issues, including reducing sex offense crimes, and improving student reading abilities. She agreed with Senator Shower that the proposed constitutional amendment language must be acceptable to the voters. She said she would not support Amendment 1 since it would establish a 25 percent minimum draw for PFDs.

[2:14:07 PM](#)

CHAIR HOLLAND related that some of his constituents support the statutory formula but that does not appear to be the way forward. He estimated that PFDs would be \$3,200 under the statutory formula and that the percentage-of-market-value (POMV) draw would be about \$2,300 to \$2,400, of which 50 percent for PFDs would be between \$1,150 and \$1,200. He offered support for the 50:50 split.

[2:14:59 PM](#)

SENATOR KIEHL agreed that the state faces tremendous problems. He disagreed with Senator Shower because he views Alaskans collectively as the government since the people elect their representatives. He reminded members that the preamble of the Alaska Constitution supports his view. He acknowledged that cutting the budget has long been desired. However, the governor's proposed budget would shift the cost of prosecutions to local taxpayers but not cut government. He suggested that if cuts could be made, they would already have been made. He reminded members that Alaska must meet the needs of Alaskans.

[2:16:15 PM](#)

CHAIR HOLLAND maintained his objection.

[2:16:21 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 1 and Senators Myers, Hughes, Shower, and Holland voted against it. Therefore, Amendment 1 failed by a 1:4 vote.

[2:16:47 PM](#)

SENATOR MYERS moved to adopt Amendment 2, work order 32-GS 1694\I.4, which was amended to include additional language:

32-GS1694\I.4  
Nauman  
5/12/21

## **AMENDMENT 2**

OFFERED IN THE SENATE

BY SENATOR MYERS

TO: CSSJR 6(JUD), Draft Version "I"

Page 1, line 11:

Delete "(b), (c), (d), and (e)"

Insert "(b) - (f)"

Page 2, line 2:

Delete "to the general fund"

Page 2, line 7, following "Each":

Insert "fiscal"

Page 2, following line 11:

Insert a new subsection to read:

"(e) Each fiscal year, the legislature may appropriate that portion of the amount appropriated under (b) of this section remaining after the appropriations under (c) and (d) of this section to the general fund."

Reletter the following subsection accordingly.

**Amendment 2 included additional handwritten language, which read:**

Page 2, line 5, "remove appropriated, add calculated"

Page 2, line 1: delete "may", insert "shall".

CHAIR HOLLAND objected for discussion purposes.

2:17:05 PM

SENATOR MYERS explained that SJR 6 proposes a percentage-of-market-value (POMV) draw of "not more" than 50 percent. He related a scenario, such that if revenues significantly increased in one year, the legislature might decide to draw less than 5 percent and retain some of the excess earnings to the permanent fund. The current language would limit PFDs to half of the draw. At the time the PFD program was established, the legislature's intent was to require the first call of the permanent fund earnings to be distributed to Alaskans. One reason for the public anger in the past five or six years was that the legislature did not follow the statutory formula. Amendment 2 would establish the PFDs at a straight 2.5 percent of the percentage-of-market-value (POMV). The legislature could draw an additional amount up to a total of 5 percent for dividends. The legislature would not be able to change the

formula. He offered his view that this will fulfill the initial intent for establishing a PFD and it would still fulfill the late Governor Hammond's 50:50 principle.

2:20:39 PM

SENATOR HUGHES pointed out that changing "may" to "shall" on page 2, line 1 would ensure that the 5 percent percentage-of-market-value (POMV) draw would be made. She highlighted that while Senator Meyer's explanation for Amendment 2 referred to 2.5 percent, that 2.5 percent represents 50 percent of the draw, which would go to PFDs.

2:21:23 PM

SENATOR SHOWER asked for clarification that changing "may" to "shall" on page 2, line 1, would ensure that the legislature could not have less than 2.5 percent of the draw. Instead, each year 50 percent of the percentage-of-market-value (POMV) would be allocated to PFDs.

SENATOR MYERS agreed that was correct.

SENATOR SHOWER said he wanted to be sure that the committee was not creating a loophole.

2:22:28 PM

SENATOR HUGHES pointed out that this language would mirror what the original statute intended and the legislature did for several decades. She said the statute basically defined the draw at 50 percent of the percentage-of-market-value (POMV) formula. The government did not need its 50 percent of the draw since the state had significant revenues to pay for government services. In fact, the reason the permanent fund grew was because the legislature was not using its portion. Making the draw smaller than the original draw as proposed in SJR 6 will ensure that the fund will continue to grow. Otherwise, it would be possible to spend more than was earned, she said.

2:24:28 PM

SENATOR KIEHL reminded members that when the constitutional amendment passed to create the permanent fund, there was no dividend. The government could use whatever funds it decided to appropriate for state services. He referred to page 2, line 6 of SJR 6, Version I, which read, "(c) Each fiscal year, fifty percent of the amount appropriated under (b) of this section shall be allocated for dividend payments... He asked why it reads "appropriated" and not "allocated" for the PFD program.

[2:25:52 PM](#)

MR. KING agreed that the language in Version I makes a distinction between appropriation and allocation. He acknowledged that the PCE fund was a transfer to the general fund and an appropriation. He said it sounds like this suggests the distribution out of the permanent fund is an allocation and not an appropriation. He deferred to Mr. Milks to further explain.

MR. MILKS answered that the language in subsection (b) provides not more than five percent of the percentage-of-market-value (POMV) can be withdrawn from the permanent fund. Subsection (c) provides that 50 percent of the appropriation shall be allocated for permanent fund dividends. (PFDs). In that circumstance, it means that of the amount being appropriated, 50 percent will be for dividends. He opined that there is no appropriation discretion. Once the percentage-of-market-value (POMV) funds are appropriated, one half will be for dividend payments.

[2:27:52 PM](#)

SENATOR KIEHL asked why Version I subsequently uses the term "appropriate" for the PCE program. He asked if a different term should be used.

MR. MILKS explained that the language in Version I, subsection (d) states that the legislature shall appropriate funds for PCE but it does not set a designated amount for it. Thus, the distinction is that Version I, subsection (c) identifies a specific calculation for the permanent fund dividend (PFD).

[2:28:30 PM](#)

SENATOR KIEHL said this bears further study. He asked whether this is a reaction to the Alaska Supreme Court ruling under *Wielechowski v. State*. That ruling essentially states that all of the appropriations from the permanent fund first go to the general fund and then wherever the legislature appropriates them. He offered his view that this appears to take a different approach. He asked for the reason to do so.

SENATOR MYERS responded that Amendment 2 would take a different approach by removing any legislative discretion related to the PFD amount, which he preferred.

[2:29:59 PM](#)

SENATOR KIEHL said he understood the intention was to remove legislative discretion. He stated his support for placing the

PFD formula in the Alaska Constitution. However, he would like Legislative Legal Services to explain the mechanics to do so.

[2:30:26 PM](#)

SENATOR HUGHES asked if the term "appropriate" was used because it was an indeterminate amount whereas "allocate" was a determinate amount since the language on page 2, lines 5 and 6 established a formula.

[2:31:10 PM](#)

CHAIR HOLLAND offered his view that the term "appropriate" was used to pull out funds and the term "allocate" was used to distribute that appropriation. An allocation of the appropriation refers to the disbursement of the funds, he said.

[2:31:45 PM](#)

MR. MILKS agreed with Chair Holland on the drafter's intent. Once the funds are appropriated, they could be allocated, distributed, or set aside. The appropriation would be based on the percentage-of-market-value (POMV), and the allocation would specify the percent of the appropriation that could be allocated to the program.

[2:32:32 PM](#)

SENATOR HUGHES stated the sponsor's intent with Amendment 2 was to ensure that half of the 5 percent of the POMV draw would be allocated for PFD payments. However, it assumes that the amount appropriated under subsection (b) would be 5 percent of the average draw. She said she was not sure that this language guaranteed that amount. The language in subsection (b) "not more than five percent" allows the legislature the flexibility to appropriate a range from zero to five percent. She asked if this would guarantee that the appropriation for PFDs would be 50 percent of the five percent POMV of the fund.

[2:33:59 PM](#)

SENATOR SHOWER said he would like that issue clarified before SJR 6 moves to the Finance Committee.

[2:34:52 PM](#)

SENATOR HUGHES referred to [Senator Myer's handwritten portion of Amendment 2, which would remove "appropriate" and replace it with "calculated" on page 2, line 5 of SJR 6, Version I. She explained that the committee would like to ensure that 50 percent of the five percentage-of-market-value (POMV) of the permanent fund would go to pay PFDs.



She explained that half of the amount calculated under subsection (b) would be allocated for dividend payments. However, subsection (b) would allow up to five percent, or essentially a range from zero to five percent, of the POMV draw to be appropriated. She expressed concern whether this language would truly guarantee that a PFD would equal 50 percent of the five percent POMV draw from the fund.

[2:35:47 PM](#)

EMILY NAUMAN, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, responded that Senator Hughes is correct that the amount for the PFD would be 50 percent of the percentage amount the legislature elected to appropriate from the permanent fund up to the five percent.

SENATOR HUGHES asked how Amendment 2 could be amended to comport with the sponsor's intent.

MS. NAUMAN suggested that the language could read, "Each fiscal year 2.5 percent of the market value of the permanent fund shall be appropriated for the payment of dividends." Further, subsection (b) could be amended to read, "The legislature could appropriate up to 2.5 percent of the POMV to the general fund." She explained this would also allocate funds to the PCE Fund.

[2:36:43 PM](#)

SENATOR HUGHES expressed concern that when voters vote on the constitutional ballot proposition, they might misconstrue the 2.5 percent of POMV as something other than 50 percent of the draw. She expressed interest in having the language clear so voters understand that fifty percent of the draw will fund PFDs and the other half would fund government.

[2:36:59 PM](#)

MS. NAUMAN opined that it was confusing to have a math problem as language in the Alaska Constitution that "fifty percent of five percent" would be allocated. That language led her to wonder why it does not just state "2.5 percent." Thus, an argument could be made for each approach.

[2:37:46 PM](#)

SENATOR HUGHES asked if the language could read, "fifty percent of the maximum amount."

[2:38:02 PM](#)

SENATOR KIEHL was unsure he agreed with Ms. Nauman. There are only two calculations in subsection (b): one is an average and

the other is five percent of that average. Thus, half of the average value of the fund is a nonsensical result so the only sensible result is that it means half of the five percent calculated but not necessarily the amount drawn. He asked how the amount calculated would mean the amount drawn.

[2:38:48 PM](#)

MS. NAUMAN stated the committee was apparently working off a different document. She directed attention to page 2, line 5 of the committee substitute (CS) for SJR 6, Version I, which read, "Each fiscal year, fifty percent of the amount appropriated under (b) of this section shall be allocated for dividend payments ...." She interpreted this to mean that the legislature could appropriate any amount from zero percent to five percent.

[After ascertaining that Ms. Nauman did not have the language for Amendment 2,] Senator Myers read the first handwritten note on Amendment 2:

Page 2, line 5: "remove appropriated, add calculated."

MS. NAUMAN acknowledged that would change her analysis. She suggested it could read "maximum amount available for appropriation" in order to conform to the existing language of SJR 6. She agreed with Senator Kiehl's point.

[2:40:43 PM](#)

SENATOR MYERS moved to adopt Conceptual Amendment 1 to Amendment 2, to add "the maximum amount calculated" on line 5.

CHAIR HOLLAND confirmed Conceptual Amendment 1 to Amendment 2 would add "maximum amount calculated"

SENATOR SHOWER stated the effect of Conceptual Amendment 1 to Amendment 2. On page 2, line 5 of Version I would read, "(c) Each fiscal year, fifty percent of the maximum amount calculated under (b) of this section shall be allocated for dividend payments to residents of the State."

SENATOR SHOWER directed attention to the second change in Conceptual Amendment 1 to Amendment 2. Page 2, line 1 of Version I, changes "may" to "shall" appropriate the dividend payments. He asked if this language would guarantee that residents will have first draw and either 50 percent or 2.5 percent of the amount appropriated will fund the PFDs.

MS. NAUMAN opined that proposed Amendment 2, as amended, would require the legislature to appropriate an amount equal to half of the 5 percent draw for a dividend every year, even if the legislature chose not to make a draw on the permanent fund.

[2:43:04 PM](#)

MS. NAUMAN asked to revert back to Conceptual Amendment 1 to Amendment 2. She said she was rethinking the language to be certain that the legislature would appropriate funds for dividends even if no draw were made to the permanent fund. She suggested adding language to Conceptual Amendment 1 to read "an amount equal to" fifty percent of the maximum amount. She explained that the legislature would want to be certain that this amount would be appropriated from the general fund even when a draw on the permanent fund did not take place in a current fiscal year.

CHAIR HOLLAND asked if she was suggesting changes to Conceptual Amendment 1 to Amendment 2, in subsection (c), after the "," to add language "an amount equal to".

MS. NAUMAN answered yes.

[2:44:06 PM](#)

SENATOR SHOWER asked if the administration agreed to the changes.

[2:44:23 PM](#)

MR. BREFCZYNSKI stated that the administration was comfortable with the additional language to the amendment.

[2:44:44 PM](#)

CHAIR HOLLAND directed attention to lines 5 and 6, to subsection (c). He stated that line 5 uses "appropriate" and line 6 uses "allocate."

SENATOR MYERS noted that the Conceptual Amendment 1 to Amendment 2 was not yet adopted.

CHAIR HOLLAND agreed.

[2:45:08 PM](#)

SENATOR SHOWER expressed an interest in whether the administration and the Legislative Legal Services attorney both agree that the effect of Conceptual Amendment 1 to Amendment 2, was that residents would have first draw plus 50 percent of the earnings even when the state's revenues were down and if the

legislature decided not to draw the full five percent of the percentage-of-market-value (POMV). He stated for the record that everyone was nodding yes. He stated support for Conceptual Amendment 1 to Amendment 2.

2:45:40 PM

CHAIR HOLLAND asked if anyone objected to Conceptual Amendment 1 to Amendment 2, which would add "maximum" before "amount".

CHAIR HUGHES interjected it would add "an amount equal to".

CHAIR HOLLAND added after the "," Conceptual Amendment 1 to Amendment 2 would add "an amount equal to."

SENATOR MYERS suggested that procedurally the committee should adopt his original Conceptual Amendment 1 to Amendment 2, and then offer a second conceptual amendment to add the language "an amount equal to".

SENATOR MYERS restated his original motion to adopt Conceptual Amendment 1 to Amendment 2, on page 2, line 5 to add "the maximum amount calculated".

CHAIR HOLLAND objected for discussion purposes.

2:46:35 PM

SENATOR HUGHES clarified Senator Myers' motion, which was to move to adopt Conceptual Amendment 1 to Amendment 2, on page 2, line 5 to insert "maximum" before "amount".

SENATOR MYERS agreed.

[The committee treated it as though the objection was removed.]

There being no further objection, Conceptual Amendment 1 to Amendment 2 was adopted.

2:47:14 PM

SENATOR MYERS moved to adopt Conceptual Amendment 2 to Amendment 2, on page 2, line 5, to insert "an amount equal to" after "year," and before "fifty".

SENATOR SHOWER asked if the administration agreed to the language.

MS. NAUMAN answered yes.

There being no further objection, Conceptual Amendment 2 to Amendment 2 was adopted.

CHAIR HOLLAND stated that Amendment 2, as amended, was before the committee.

[2:48:14 PM](#)

SENATOR KIEHL said some provisions of SJR 6 use "appropriate" but other provisions use "allocate." He recalled that in the budget, the legislature appropriates funds for a purpose. He asked whether there was a constitutional effect to use "allocate" rather than "appropriate."

MS. NAUMAN pointed out that the word "allocated" appears in the original draft. She said she would rely on Mr. Milk's explanation. She surmised that a court would find that the words had different meanings. She opined that "allocate" would mean that the monies would automatically be transferred without an appropriation. She suggested that there is value in being consistent with the usage. Stating "The legislature shall appropriate ..." would make it clear how the movement of monies would happen, she said.

[2:50:20 PM](#)

CHAIR HOLLAND said he was fine with using the term "allocate."

[2:50:43 PM](#)

SENATOR KIEHL said he preferred the consistent use of the term, "appropriate" because the intent was clear.

[2:50:58 PM](#)

SENATOR HUGHES recalled that "allocate" would mean an automatic transfer of monies, which was due to the Wielechowski v. State decision. She expressed concern that using "allocate" may mean the legislative process could be skipped.

MS. NAUMAN answered that she was unsure what "allocate" meant. The statutes that were challenged in Wielechowski v. State used the word "transfer" so that decision provided statutory history for what "transfer" might mean. However, she recalled the legislature continued to make appropriations despite the word "transfer" being in statute. One of the reasons she was not concerned about the Wielechowski decision is because SJR 6 would amend the Alaska Constitution. She said she would rely on Mr. Milks to determine what the administration's intent was when using the word "allocation."

[2:52:14 PM](#)

SENATOR HUGHES recalled that when the fund was created, funds were automatically transferred and PFDs were distributed to eligible residents. She asked if the administration envisioned this process would be used.

MR. BREFCZYNSKI responded that the intent was to guarantee 50 percent of the draw for the POMV as dividends for the eligible recipients in the state. Since the committee adopted several conceptual amendments to SJR 6, he said he would defer to Mr. Milks.

[2:53:21 PM](#)

MR. MILKS responded that Mr. Brefczynski explained the administration's intent in SJR 6 was for the process to be automatic. He explained that the overall intent was that 50 percent of the amount appropriated shall be distributed for dividend payments. The appropriation would be based on allocating 50 percent of the POMV. The common understanding was this would mean that the funds would be set aside. The committee could decide to insert "appropriate" if it chooses to do so.

[2:54:47 PM](#)

SENATOR HOLLAND encouraged members to close out Amendment 2. He offered to solicit a further amendment to address "allocate."

[2:55:01 PM](#)

SENATOR HUGHES asked Mr. Milks to consider the effect of the amendments to SJR 6 since "appropriated" was replaced by "calculated." She asked if that language means that it would bypass the legislature and go straight to distribution. She offered her belief that the legislature appropriates. She wondered if using "calculated" and "allocated" would mean it would be an automatic transfer.

[2:55:50 PM](#)

MR. MILKS explained that he was responding to the issue Senator Kiehl raised on page 2, line 6 of SJR 6. If the committee is speaking to SJR 6, as amended by Senator Myers, it would be helpful to hear that language since he does not have it in writing.

[2:56:29 PM](#)

SENATOR HUGHES stated it would read, "Each fiscal year an amount equal to fifty percent of the maximum amount calculated under (b) of this section shall be allocated for dividend payments to residents of the State."

MR. MILKS remarked that it was important that the language means what the members intended it to mean.

2:58:21 PM

SENATOR KIEHL said he liked the Chair's suggestion that the committee finish its action on Amendment 2. He offered to take up whether to use "allocate" or "appropriate" on its own.

2:58:40 PM

CHAIR HOLLAND stated that Amendment 2, with [handwritten amendments added], and as amended by Conceptual Amendments 1 and 2 was before the committee.

CHAIR HOLLAND removed his objection.

There being no further objection, Amendment 2, as amended, was adopted.

2:59:07 PM

SENATOR KIEHL moved to adopt Conceptual Amendment 3, on page 2, line 6, to replace the word "allocated" with "appropriated."

CHAIR HOLLAND objected for discussion purposes.

SENATOR KIEHL explained that the courts look to legislative intent and the committee's understanding when the words are not clear. The courts also assume that different words mean different things. He offered his belief that Senator Myers was clear and if the legislature intends to constitutionalize the permanent fund dividend the language should be very clear, such as "shall be appropriated." He directed attention to Art. IX, Sec. 13, and read, "No money shall be withdrawn from the treasury except in accordance with appropriations made by law." Therefore, he would like the language in every section of SJR 6 to match the language in the Alaska Constitution by using the word "appropriate."

3:00:15 PM

CHAIR HOLLAND stated that this resolution will be going to the Finance Committee next.

3:00:24 PM

SENATOR HUGHES offered her belief that this was a policy call. If the language in SJR 6 uses "appropriate" it means that the funds will pass through the legislative process as a line item in the budget. She said she understood Art. IX, Sec. 13 as read.

However, if the legislature decides to make an exception and not have the fifty percent draw for PFD payments to go through the legislative process, it could be accomplished via a direct transfer. That is what initially happened with the original PFD. According to Ms. Nauman, the word "allocate" would be a direct transfer and bypass the legislative process. She further understood her intent that residents receive half of the five percent draw. She expressed an interest in knowing her view on bypassing the legislature and reverting to transferring the funds for PFDs. She asked for the administration's intent and if it was interested in the direct transfer for PFD payments to avoid the potential for the legislature to muddle it up.

MR. BREFCZYNSKI responded that the administration would prefer a direct transfer. He suggested that the budget process may entail delays or be subject to vetoes. The intent would be to guarantee the dividend as fifty percent of the POMV. He deferred to Mr. Milks in terms of whether "allocate" will satisfy the transfer.

[3:02:42 PM](#)

SENATOR HUGHES asked whether "allocate" indicates a transfer that would bypass the legislative process.

MR. MILKS responded that he believes that is what it states.

MS. NAUMAN responded that she reviewed the section of the Alaska Constitution that Senator Kiehl referenced. She said she agrees with him that this section would be better and less likely to conflict with that section if this sentence read, "The legislature shall appropriate fifty percent of the maximum amount calculated to go to dividends for state residents."

[3:03:58 PM](#)

SENATOR HUGHES asked if there could be an exception in the Alaska Constitution. She suggested it might not work in statute due to the dedicated funds prohibition.

CHAIR HOLLAND asked if the language "appropriate" could allow a future legislature to adjust the amount.

SENATOR HUGHES clarified that she was not concerned about that but rather that the PFD payments could be slowed down or vetoed. However, allocating the direct transfer ensures that PFDs would be paid to residents.

[3:05:17 PM](#)



MR. KING responded that if it is the committee's will to accept this amendment, it might be good to insert an exemption from the line item veto. Otherwise, leaving the language as "allocation" may create some ambiguity. That ambiguity could force the courts to discuss why that ambiguity exists. He said there is extensive legislative intent during this debate. He suggested that Legislative Legal Services may be able to clarify whether the legislative intent would survive a court challenge. One of those two options seems viable to him, he said.

[3:05:55 PM](#)

CHAIR HOLLAND stated his intention to maintain his objection.

SENATOR SHOWER read online definitions [no source given] that An Act of appropriation means an Act of the legislature authorizing money to be paid from the treasury for a specified purpose. However, "allocate" means to set aside for a purpose.

[3:06:36 PM](#)

A roll call vote was interrupted by an at-ease.

[3:06:55 PM](#)

At ease

[3:07:37 PM](#)

CHAIR HOLLAND reconvened the meeting.

[3:07:53 PM](#)

SENATOR HUGHES stated her preference was to use "allocate." The PFDs initially used a process that provided more certainty and will avoid a potential veto. She suggested that if the Chair is eager to pass SJR 6 from committee, this discussion could be taken up by the Finance Committee. She said she does not want to change the language to "appropriate" because it means that PFDs will use the budget process unless another amendment could provide veto proofing. She pointed out that Mr. Milks previously stated that the administration's intent was to use the language "allocate," which means that funds would automatically transfer and not require legislative appropriation.

CHAIR HOLLAND stated his preference was to use "allocate" rather than "appropriate." He offered his view that a future legislature could decide not to "allocate" the funds.

[3:09:19 PM](#)

SENATOR KIEHL commented that the committee has heard that the attorneys disagreed about the meaning of the specific terms. If

the intention is for the Alaska Constitution to read "transfer without appropriation" or "be used without appropriation", that language should be added, he said. He recalled that Senator Shower read a definition of "allocation" but he questioned the meaning. He stated that the language that is closest to the meaning was "shall appropriate."

[3:09:53 PM](#)

SENATOR SHOWER related his understanding that the committee would like to move SJR 6 as the vehicle for further discussion. He stated that he would not support Conceptual Amendment 3 since he would prefer to move the bill to the Finance Committee to debate the most relevant language to use. He related that staff raised the issue of the line item veto so the language needs further vetting.

CHAIR HOLLAND maintained his objection.

[3:10:38 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Conceptual Amendment 3 and Senators Shower, Hughes, Myers, and Holland voted against it. Therefore, Conceptual Amendment 3 failed by a 1:4 vote.

[3:11:10 PM](#)

SENATOR SHOWER asked if the committee wanted to entertain a conceptual amendment to add language to veto proof the appropriation.

[3:11:42 PM](#)

At ease

[3:12:44 PM](#)

CHAIR HOLLAND reconvened the meeting.

[3:13:00 PM](#)

SENATOR HUGHES directed attention to page 2, line 6 of SJR 6. She asked what language would ensure that the funds for PFD payments will be transferred without going through the legislative budget process or being subject to any delays.

She asked Mr. Milks to first respond, followed by Ms. Nauman. She added that Mr. Milk's opinion was that "allocate" would allow the transfer of funds to bypass the legislative process and ensure PFD payments were made. She expressed concern that additional language may be needed to ensure the funds would not be subject to the budget process and be susceptible to a veto.

3:14:21 PM

MR. MILKS responded that if the committee was interested in protecting against the possibility of a veto, he suggested inserting language, "The transfer is not subject to a veto under Art. II, Sec. 16."

3:14:48 PM

SENATOR HUGHES expressed concern that with that language, the funds could still end up as part of the budget process. She asked whether there was some way to directly transfer funds to avoid being part of the legislative budget process and subject to a veto.

3:15:20 PM

MR. MILKS responded that Ms. Nauman identified the appropriation provision in the Alaska Constitution as Art. IX, Sec. 13. He related his understanding that the committee seeks language for maximum coverage so it is not an appropriation and funds would not be subject to a veto, such that both Articles would be referenced. It would not be an appropriation subject to Art. IX, Sec. 13 and not subject to veto under Art. II, Sec. 16.

3:16:14 PM

SENATOR HUGHES asked whether this language means it cannot be vetoed. She offered her belief that the language would still not prevent transferred funds from being a line item in the budget.

3:16:26 PM

MS. NAUMAN explained that part of the reason that two attorneys are grappling with the language is because the committee seeks to create a new mechanism to move monies that does not currently appear in the Alaska Constitution.

She agreed with Mr. Milks if the committee would like to exempt PFDs from the current process that all the money flows through under the constitution, the language could read, "Notwithstanding Art IX, Sec 13 in the Constitution of the State of Alaska, each year fifty percent of the maximum amount calculated under (b) of this section shall be allocated for a payment of dividends to residents of the state." Further, to ensure against a veto, to add language, "A governor may not veto or reduce the amount allocated under this section under Art. II, Sec. 15."

SENATOR HUGHES was unsure if she could repeat the exact language in a conceptual amendment.

[3:17:38 PM](#)

MR. MILKS concurred with Ms. Nauman's suggested language.

[3:17:44 PM](#)

CHAIR HOLLAND asked Ms. Nauman to state the suggested language.

MS. NAUMAN restated the proposed language:

On page 2, line 5, before the word "Each", add "Notwithstanding Art. IX, Sec. 13 Constitution of the State of Alaska, Each year, ...". On page 2 line 6, following, "State.", insert a new sentence to read, "Notwithstanding Art. II, Sec. 15, the governor may not veto or reduce the amount allocated under this section.

MS. NAUMAN further suggested changing "allocate to "transfer" since Senator Kiehl and her budget colleagues stated an implication that "allocation" means money could be moved within an appropriation. Since the goal was to create a new constitutional concept, perhaps using "transfer" might better describe the goal the committee wishes to accomplish, she said.

[3:19:24 PM](#)

SENATOR HUGHES moved to adopt Conceptual Amendment 4, using Ms. Nauman's suggested language and her suggested change, on line 6, to delete "allocated" and insert "transferred". Conceptual Amendment 4 to Version I read:

On page 2, line 5, subsection (c), before "Each" to add, "Notwithstanding Art. IX, Sec. 13, Constitution of the State of Alaska." In subsection (c), Each year, ...". On page 2 line 6, following, "State.", insert, Notwithstanding Art. II, Sec. 15, the governor may not veto or reduce the amount transferred under this section.

MR. BREFCZYNSKI stated that the administration agreed with the language.

[3:20:06 PM](#)

CHAIR HOLLAND acknowledged that the recording would capture the language in Conceptual Amendment 4. He restated the motion before the committee. On page 2, line 5, after subsection (c), before "Each" to add, "Notwithstanding Art. IX, Sec. 13, Constitution of the State of Alaska." After the "." at the end

of [subsection] (c) add, "Notwithstanding Art. II, Sec. 15, the governor may not reduce or veto the amount transferred under this section."

CHAIR HOLLAND removed his objection. There being no further objection, Conceptual Amendment 4 was adopted.

[3:21:13 PM](#)

SENATOR SHOWER moved to report the proposed committee substitute (CS) for SJR 6, Version I, as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSJR 6 (JUD) was reported from the Senate Judiciary Standing Committee.

[3:21:58 PM](#)

At ease

**HB 109-EXTEND BAR ASS'N BOARD OF GOVERNORS**

[3:22:34 PM](#)

CHAIR HOLLAND reconvened the meeting and announced the consideration of HOUSE BILL NO. 109, "An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

[HB 109 was previously heard on 5/5/21 and 5/7/21. Public testimony was opened and closed on 5/5/21.]

[3:22:59 PM](#)

SENATOR SHOWER moved to adopt Amendment 1, [work order 32-LS 0592\A.6].

32-LS0592\A.6  
Fisher  
5/11/21

**AMENDMENT 1**

OFFERED IN THE SENATE  
TO: HB 109

BY SENATOR SHOWER

Page 1, line 6:  
Delete "2029"  
Insert "2026"

CHAIR HOLLAND objected for discussion purposes.

SENATOR SHOWER explained Amendment 1. He stated that the committee discussed reducing the time for the next sunset review from eight years to a shorter timeframe. On page 1, line 6, Amendment 1 would delete "2029" and insert "2026" to provide the next sunset review in five years.

[3:23:33 PM](#)

CHAIR HOLLAND recalled that the last audit suggested an increase in continuing legal education (CLE). He related his understanding that this would allow the auditors to revisit the CLE issue. Amendment 1 would provide the legislature an opportunity to review the board in three years.

SENATOR SHOWER agreed that captured Amendment 1.

[3:24:04 PM](#)

SENATOR KIEHL stated his support to increase the number of CLE hours required. He stated that he has requested a bill to require an increase to CLE hours to ensure that will occur. He offered his view that Amendment 1 would take an otherwise clean audit that recommended the maximum number of hours before the next sunset audit. He said he did not think it was worth the extra cost to the state to conduct the audit and for the board to comply with the audit.

[3:24:45 PM](#)

SENATOR HUGHES related that there is a separation of powers issue with requiring additional CLE hours because it would take a Court Rule change and two-thirds vote by the legislature. She said she decided against offering such an amendment. She pointed out that the [Board of Governors of the Alaska Bar] was aware of the issue in June 2020. The board met and assigned a committee to address the CLE issue, which she said she finds a bit troubling.

[3:25:34 PM](#)

CHAIR HOLLAND related that there were other minor performance issues, including properly noticing public meetings. He stated his support to reduce the sunset audit to five years. He said he would maintain his objection.

[3:26:00 PM](#)

REPRESENTATIVE MATT CLAMAN, Alaska State Legislature, Juneau, Alaska, sponsor of HB 109, stated that the House heard a sunset audit for the Board of Certified Direct-Entry Midwives today. The auditors recommended a two-year extension because there were

significant problems in the board's function. It reminded him to consider whether to add the burden on auditors since it might require adding additional auditors and growing state government. He suggested that rather than amending the Court Rule in HB 109, to introduce a separate bill to urge the [Alaska Bar Association (Bar)] to change CLE hours. He offered his view that this would likely be more effective than to extend the Board for five years. He acknowledged he could not promise what the court would do but it is generally receptive to those changes. He maintained that if the committee's interest were to focus on CLE, it could decide to extend the sunset audit review for the Board of Governors of the Alaska Bar Association to eight years and address CLE in a separate bill.

[3:27:40 PM](#)

SENATOR SHOWER stated that extending the board for an additional three years made sense to him since the legislature would not likely have time to address another bill next year and the board will sunset next month. He suggested that the committee could potentially hear another bill next year, but it needs to take action now.

[3:28:33 PM](#)

CHAIR HOLLAND stated that the Senate Education Committee had similar issues with SB 111. He suggested that if the board made progress, he would be willing to extend the review to eight years.

[3:29:05 PM](#)

CHAIR HOLLAND maintained his objection.

[3:29:13 PM](#)

A roll call vote was taken. Senators Shower, Hughes and Holland voted in favor of Amendment 1 and Senator Myers and Kiehl voted against it. Therefore, Amendment 1 was adopted by a 3:2 vote.

CHAIR HOLLAND solicited a motion.

[3:29:43 PM](#)

SENATOR SHOWER moved to report HB 109, as amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, the SCS HB 109(JUD) was reported from the Senate Judiciary Standing Committee.

[3:30:18 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 3:30 p.m.